

may be allowed under section 5596 of title 5, United States Code, and this subpart for the services of any employee of the Federal Government, except as provided in section 205 of title 18, United States Code, relating to the activities of officers and employees in matters affecting the Government.

(g) A determination concerning whether the payment of reasonable attorney fees is in the interest of justice and concerning the amount of any such payment shall be subject to review or appeal only if provided for by statute or regulation.

(h) This section does not apply to any administrative proceeding that was pending on January 11, 1979.

[46 FR 58275, Dec. 1, 1981. Redesignated at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

#### **§ 550.808 Prohibition against setting aside proper promotions.**

Nothing in section 5596 of title 5, United States Code, or this subpart shall be construed as authorizing the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

### **Subpart I—Pay for Duty Involving Physical Hardship or Hazard**

AUTHORITY: 5 U.S.C. 5545(d), 5548(b).

#### **§ 550.901 Purpose.**

This subpart prescribes the regulations required by sections 5545(d) and 5548(b) of title 5, United States Code, for the payment of differentials for duty involving unusual physical hardship or hazard to employees.

[56 FR 20344, May 3, 1991]

#### **§ 550.902 Definitions.**

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102(a)(1).

*Duty involving physical hardship* means duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or me-

chanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation.

*Employee* has the meaning given that term in 5 U.S.C. 5102(a)(2).

*Hazardous duty* means duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.

*Hazard pay differential* means additional pay for the performance of hazardous duty or duty involving physical hardship.

*Head of an agency* means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

[56 FR 20344, May 3, 1991, as amended at 59 FR 33416, June 29, 1994]

#### **§ 550.903 Establishment of hazard pay differentials.**

(a) A schedule of hazard pay differentials, the hazardous duties or duties involving physical hardship for which they are payable, and the period during which they are payable is set out as appendix A to this subpart and incorporated in and made a part of this section.

(b) Amendments to appendix A of this subpart may be made by OPM on its own motion or at the request of an agency. An agency may recommend the rate of hazard pay differential to be established and shall submit with its request for an amendment of the appendix information about the hazardous duty or duty involving physical hardship showing—

- (1) The nature of the duty;
- (2) The degree to which the employee is exposed to hazard or physical hardship;
- (3) The length of time during which the duty will continue to exist;
- (4) The degree to which control may be exercised over the physical hardship or hazard; and